IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.14 OF 2005

Dattatraya Arjun Lawange ...Appellant

Vs.

Shankar Arjun Lawange ...Respondent

CORAM: A.S.OKA, J.

DATED: JANUARY 17, 2005.

P.C.:

1. Admit. Shri Thorat waives service for the Respondent. Considering the facts and circumstances of the case, taken up for final hearing immediately.

2. By the impugned order dated 2nd November 2004, the learned Trial Judge has allowed the Contempt Notice of Motion No.2279 of 2004. The learned Trial Judge has directed that the Appellant should be detained in prison. He has also passed order of restoration of the possession . On plain reading of the order it is clear that there is no specific finding recorded by the learned Judge that on the date on which the suit was filed by the Respondent-Plaintiff, he was in possession of the property and that after service of order of ad-interim injunction, the Appellant has dispossessed the Respondent. Unless and until a clear finding is recorded in that behalf, no further order could have been passed on

Contempt Notice of Motion. There is no finding recorded that there is a wilful disobedience of the order by the Appellant. I find from the impugned order that a reply was not filed by the Appellant to the Contempt Notice of Motion. Since the impugned order is unsustainable the same will have to be set aside. However, Contempt Notice of Motion will have to be re-heard as the Respondent has made allegations of very serious nature against the Appellant regarding dis-obedience of order of ad-interim injunction.

3. Hence I pass the following order :

i) Impugned order dated 2nd November 2004 is quashed and set aside in so far as the Contempt Notice of Motion No.2279 of 2004 is concerned. The said Notice of Motion is restored.

ii) The Appellant is granted time up to 7th February 2005 to file reply to the Contempt Notice of Motion as a last chance.

iii) The learned Judge will decide the Contempt Notice of Motion afresh as expeditiously as possible and in any event on or before 31st March 2005.

iv) All contentions on merit are kept open.

v) Appeal is allowed subject to above terms with no order as to costs.

Judge.